

Policy and Administrative Regulations

CHAPTER 4: BENEFITS

TITLE: FAMILY AND MEDICAL LEAVE (FML) (4.11)

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**City of
Norfolk**

EFFECTIVE DATE: May 1, 2013

POLICY ORGANIZATION: Department of Human Resources

APPROVAL

I. PURPOSE

The City of Norfolk, as a covered employer, is committed to complying with the Family and Medical Leave Act of 1993 (FMLA), as amended, and all regulations and guidelines administered by the U. S. Department of Labor's (DOL) Employment Standards Administration, Wage and Hour Division.

II. POLICY

This policy provides eligible employees the opportunity to utilize job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

A. Employee Eligibility

To be eligible for Family and Medical Leave (FML) benefits, an employee must:

- have worked for the City for at least 12 months and
- have worked for the City at least 1,250 hours over the previous 12 months

B. Leave Entitlement

Eligible employees are entitled to up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- the birth and care of a newborn child of the employee;
- placement, with the employee, of a son or daughter for adoption or foster care;
- to care for a spouse, son, daughter, or parent with a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition;
- for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active duty status as a member of the Armed Forces, National Guard or Reserves.

C. Military Family Leave Entitlements

1. Military Caregiver Leave

An eligible employee, who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness, is entitled to up to a total of 26 workweeks of leave during a single 12-month period to care for the servicemember.

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Current Servicemember

A covered servicemember is a current member of the Armed Forces, National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

A serious injury or illness is one that was incurred by a servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating or existed before the beginning of the member's active duty and were aggravated by service in the line of duty on active duty in the Armed Forces.

Veteran of the Armed Forces

A covered servicemember is a veteran discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FML to care for the covered veteran and who is undergoing medical treatment, recuperation or therapy for a serious injury or illness.

For any veteran who was discharged prior to March 8, 2013, the period of time between October 28, 2009 and March 8, 2013 will not count as part of the five-year period. As long as the military caregiver leave begins within five years of the veteran's discharge, the 12-month period may extend beyond the five-year period.

For a veteran, a serious injury or illness is one that was incurred by the veteran in the line of duty on covered active duty in the Armed Forces, National Guard or Reserves or that existed before the veteran's covered active duty and was aggravated by service in the line of duty on covered active duty, and that is either:

- a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces, and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank or rating; or
- a physical or mental condition for which the veteran has received a Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater. (The rating may be based on multiple conditions); or
- a physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or
- an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

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The single 12-month period for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FML. An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period.

2. Qualifying Exigency Leave

An eligible employee is entitled to up to a total of 12 workweeks of leave during the normal 12-month period for FML for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty, or has been notified of an impending call or order to covered active duty. Under the terms of the statute, qualifying exigency leave is available to a family member in the Armed Forces, National Guard or Reserves.

Qualifying exigencies may include:

- Attending certain military events;
- Arranging for alternative child care;
- Addressing certain financial and legal arrangements;
- Attending certain counseling sessions;
- Attending post-deployment reintegration briefings; and
- Rest and Recuperation to a maximum of fifteen (15) calendar days.

FML may be taken intermittently whenever medically necessary to care for a covered servicemember with a serious injury or illness. FML may also be taken intermittently for a qualifying exigency arising out of the covered active duty status or call to covered active duty of a military member. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

D. Leave Conditions

FML requested under this policy must be taken within the 12-month period of the qualifying event.

Under some circumstances, employees may utilize FML intermittently, using leave in separate blocks of time for a single qualifying event or on a reduced leave schedule reducing the employee's usual weekly or daily work schedule.

Employee's certification must clearly define expected periods of intermittent leave. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

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When spouses are both employed by the City and request leave under this policy, their aggregate leave is limited to twelve (12) weeks or twenty-six (26) weeks for care of a servicemember in a single 12-month period.

Eligible employees must use (run concurrently) available accrued paid leave (i.e., sick, annual, compensatory, holiday leave) to cover some or all of the FML. An employee's ability to use accrued paid leave is determined by the terms and conditions of the City's normal leave policy. Use of flexible or alternative work schedules beyond scheduled working hours will not be allowed to adjust FML.

E. Job Restoration

Generally, any employee who takes leave under the FMLA is entitled to return to his or her position, if available, upon completion of the leave. If the position is unavailable, the employee is entitled to a "genuinely equivalent" position, with equal pay, benefits, status and other conditions of employment previously enjoyed.

F. Outside Employment

Employees engaged in previously-authorized other employment must obtain authorization to continue in said employment during the approved FML absence.

III. PROCEDURE

Notice and Certification

A. Employee Notice

An employee seeking to use FML is required to provide thirty (30) days' advance notice of such leave. If the employee is unable to provide thirty (30) days' notice, he or she must provide such notice as is practical, generally, either the same or next business day and must comply with the employee's departmental call-in procedures. Absent unusual circumstances, employees must comply with the City's procedural requirements for requesting leave.

An employee must provide sufficient information in order for the City to reasonably determine whether the FMLA may apply to the leave request. Any requested certification must be completed and provided to the City within fifteen (15) calendar days. If the employee is notified that necessary information is missing from the certification, the missing information must be provided within seven (7) calendar days.

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B. Employer Notice

When an employee requests FML or knowledge is acquired by the City that leave may be for a FMLA purpose including periods of time for which the employee receives Workers' Compensation benefits, the employee must be notified within five (5) business days of eligibility and informed of rights and responsibilities under the FMLA.

When information has been received to determine whether or not the event qualifies for FML, the employee must be notified within five (5) business days of the status of the request.

All FMLA medical certification and notice forms will be obtained from the Department of Labor website, www.dol.gov/whd/fmla or a local DOL office.

C. Certification

Employee Leave:

Employees requesting FML must provide sufficient information for the City to reasonably determine whether the FMLA may apply to the leave request. An employee's certification must include:

- the date the serious health condition began
- the probable duration of the condition
- appropriate supporting medical facts concerning the condition

If the leave is based on the employee's own condition, the certification also must affirm his or her inability to perform his or her job. Where the leave is necessitated by care of a spouse, son, daughter or parent, it must be certified that the employee is needed to provide this care.

Military Caregiver Leave:

Employees requesting military caregiver leave must provide certification supporting the leave request that includes:

- contact information for the authorized health care provider completing the certification, the type of medical practice or specialty, and affiliation with the military, if any
- whether the injury or illness was incurred or aggravated by service in the line of duty on active duty, when it began or was aggravated, and its likely duration
- a statement of appropriate facts regarding the servicemember's health condition sufficient to support the need for FML

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- information to show that the servicemember needs care and estimates for the period and dates of treatment or recovery needed
- if care is needed intermittently or on a reduced schedule, the schedule of treatments or appointments, or an estimate of the frequency and duration of the periodic care
- employee's name, the name of the servicemember, and employee's relationship to the servicemember
- information on the servicemember's branch, rank, and unit assignment or the veteran's date and type of separation

When the City has reason to doubt the validity of a medical certification, the City may require a second opinion. Selection of the new physician is subject to the City's approval. If the two health care providers disagree, the City may require the opinion of a third jointly approved medical provider who shall be the final authority on the question. Second and third opinions are at the City's expense and the City may not use a health care provider it employs on a regular basis. The City may also require the employee to obtain subsequent recertification on a reasonable basis.

Military Exigency Leave:

Employees requesting military exigency leave must provide sufficient information and certification supporting the leave request that includes:

- a copy of the servicemember's active duty orders
- statement or description of facts regarding the qualifying exigency
- date of qualifying exigency and beginning and ending dates of requested leave, or frequency and duration of intermittent leave
- contact information for third party involved with qualifying exigency
- if the qualifying exigency is for Rest and Recuperation, a copy of the servicemember's leave orders or other leave documentation

D. Maintenance of Health Benefits

The City will maintain the employee's group health coverage during the approved leave of absence at the same level of contribution as provided prior to the period of absence.

The employee will be responsible for his/her portion of the premium if he/she wishes to maintain health care coverage. The employee's portion of the premium will continue to be deducted from his/her pay when the employee is on a paid leave of absence. An employee on an unpaid leave of absence will be responsible for direct payment of his/her portion of the premium to the City.

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IV. DEFINITIONS

- A. FML – Family Medical Leave
- B. 12-month period – measured forward from the date any employee's first FML begins
- C. 12 workweeks – workweeks are defined by the City in accordance with the Fair Labor Standards Act (FLSA)
- D. Qualifying Exigency – broadly defined as short-notice deployment, military events and related activities, arranging for alternative child care, financial and legal arrangements, attending certain counseling sessions, rest and recuperation, or post-deployment reintegration activities
- E. Serious Health Condition – an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.
- F. U. S. Department of Labor FMLA Form(s) – available on the DOL website, <http://www.dol.gov/whd/fmla>

V. RESPONSIBILITY

A. Employees

Employees are responsible for requesting a leave of absence in accordance with established leave policies and providing sufficient documentation utilizing the appropriate DOL FMLA form(s). Additionally, employees must provide status updates as necessary.

Employees engaged in other employment must request approval to continue other employment while on approved FMLA leave.

B. Supervisors/Managers

Supervisors/Managers are responsible for ensuring all requests for FMLA leave are processed in accordance with established leave policies and in a timely manner. All FMLA related documentation must be forwarded to the Department of Human Resources.

C. Human Resources

The Department of Human Resources is responsible for providing policy administration, guidance, and compliance.

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VI. HISTORY

Replaces Policy Number 4.11, Family and Medical Leave, Issued January 1, 2004, Revised January 16, 2009, Revised August 3, 2009.

VII. AUTHORITY

- A. This policy has been established by the City Manager, in accordance with the provisions of the Family and Medical Leave Act.
- B. In the event of any conflict between this policy and the Family and Medical Leave Act, the latter takes precedence.